

2001 K STREET, NW
WASHINGTON, DC 20006-1047
TELEPHONE (202) 223-7300

LLOYD K. GARRISON (1946-1991)
RANDOLPH E. PAUL (1946-1956)
SIMON H. RIFKIND (1950-1995)
LOUIS S. WEISS (1927-1950)
JOHN F. WHARTON (1927-1977)

WRITER'S DIRECT DIAL NUMBER

(202) 223-7313

WRITER'S DIRECT FACSIMILE

(202) 379-4937

WRITER'S DIRECT E-MAIL ADDRESS

wisaacson@paulweiss.com

1285 AVENUE OF THE AMERICAS
NEW YORK, NY 10019-6064
TELEPHONE (212) 373-3000

UNIT 5201, FORTUNE FINANCIAL CENTER
5 DONGSANHUAN ZHONGLU
CHAOYANG DISTRICT, BEIJING 100020, CHINA
TELEPHONE (86-10) 5828-6300

SUITES 3601 - 3606 & 3610
36/F, GLOUCESTER TOWER
THE LANDMARK
15 QUEEN'S ROAD, CENTRAL
HONG KONG
TELEPHONE (852) 2846-0300

ALDER CASTLE
10 NOBLE STREET
LONDON EC2V 7JU, UNITED KINGDOM
TELEPHONE (44 20) 7367 1600

FUKOKU SEIMEI BUILDING
2-2 UCHISAIWAICHO 2-CHOME
CHIYODA-KU, TOKYO 100-0011, JAPAN
TELEPHONE (81-3) 3597-8101

TORONTO-DOMINION CENTRE
77 KING STREET WEST, SUITE 3100
P.O. BOX 226
TORONTO, ONTARIO M5K 1J3
TELEPHONE (416) 504-0520

500 DELAWARE AVENUE, SUITE 200
POST OFFICE BOX 32
WILMINGTON, DE 19899-0032
TELEPHONE (302) 655-4410

PARTNERS RESIDENT IN WASHINGTON

JUSTIN ANDERSON
J. STEVEN BAUGHMAN
CRAIG A. BENSON
JOSEPH J. BIAL
KAREN L. DUNN
KENNETH A. GALLO
ROBERTO J. GONZALEZ
WILLIAM A. ISAACSON

MARK F. MENDELSON
JANE B. O'BRIEN
JESSICA E. PHILLIPS
JEANNIE S. RHEE
CHARLES F. "RICK" RULE
KANNON K. SHANMUGAM
JULIA TARVER MASON WOOD

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MATTHEW B. GOLDSTEIN*
CATHERINE L. GOODALL*
CHARLES H. GOOGE, JR.*
ANDREW G. GORDON*
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UDI GROFMAN*
NICHOLAS GROOMBRIDGE*
BRUCE A. GUTENPLAN*
MELINDA HAAG
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ROBERT E. HOLO*
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AMRAN HUSSEIN*
LORETTA A. IPPOLITO*
JAREN JANGHORBANI*
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JEH C. JOHNSON
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PATRICK N. KARSNITZ*
JOHN C. KENNEDY*
BRIAN KIM*
KYLE J. KIMPLER*
ALEXIA D. KORBERG*
ALAN W. KORNBERG

DANIEL J. KRAMER*
BRIAN KRAUSE*
CAITH KUSHNER*
DAVID K. LAKHDHIR
GREGORY F. LAUFER*
BRIAN C. LAVIN*
XIAOYU GREG LIU*
RANDY LUSKEY*
LORETTA E. LYNCH*
JEFFREY D. MARELL*
MARCO V. MASOTTI*
DAVID W. MAYO*
ELIZABETH R. MCCOLM*
JEAN M. MCLOUGHLIN*
ALVARO MEMBRILLERA*
CLAUDINE MEREDITH-GOUJON*
WILLIAM B. MICHAEL*
JUDIE NG SHORTELL*
CATHERINE NYRADY*
BRAD R. OKUN*
LINDSAY B. PARKS*
ANDREW M. PARLEN
DANIELLE C. PENHALL*
CHARLES J. PESANT*
AUSTIN POLLET*
VALERIE E. RADWANER*
JEFFREY J. RECHER*
CARL L. REISNER*
LORIN L. REISNER*
WALTER G. RICCIARDI*
RICHARD A. ROSEN*
ANDREW N. ROSENBERG*
JUSTIN ROSENBERG*
JACQUELINE P. RUBIN*
RAPHAEL M. RUSSO*
ELIZABETH M. SACKSTEDER*
JEFFREY D. SAFERSTEIN*
JEFFREY B. SAMUELS*
KENNETH M. SCHNEIDER*
ROBERT B. SCHUMER*
JOHN M. SCOTT*
BRIAN SCRIVANI*
KYLE T. SEIFRIED*
AUDRA J. SOLOWAY*
CULLEN L. SINCLAIR*
SCOTT M. SONTAG*
SARAH STASNY*
TARUN M. STEWART*
ERIC ALAN STONE*
AIDAN SYNNOTT*
BRETTE TANNENBAUM*
RICHARD C. TARLOWE*
DAVID TARR*
MONICA K. THURMOND*
DANIEL J. TOAL*
LAURA C. TURANO*
CONRAD VAN LOGGERENBERG*
KRISHNA VEERARAGHAVAN*
JEREMY M. VEIT*
LIZA M. VELAZQUEZ*
MICHAEL VOGEL*
RAMY J. WAHBEH*
JOHN WEBER*
LAWRENCE G. WEE*
THEODORE V. WELLS, JR.
LINDSEY L. WIERMA*
STEVEN J. WILLIAMS*
LAWRENCE I. WITDORCHIC*
AUSTIN WITT*
MARK B. WLAZLO*
ADAM WOLLSTEIN*
JENNIFER H. WU*
BETTY YAP
JORDAN E. YARETT*
KAYE N. YOSHINO*
TONG YU*
TRACEY A. ZACCONE*
TAURIE M. ZEITZER*
T. ROBERT ZOCHOWSKI, JR.*

*NOT AN ACTIVE MEMBER OF THE DC BAR
**ADMITTED ONLY TO THE CALIFORNIA BAR

November 14, 2021

BY ECF

The Honorable Norman K. Moon
United States District Court
Western District of Virginia
255 West Main Street
Charlottesville, VA 22902

Re: *Sines et al. v. Kessler et al.*, No. 3:17-cv-00072 (NKM) (JCH)

Dear Judge Moon:

We write to follow-up on the Court's comments from last Friday that Mr. Schoep's alleged repudiation of his white supremacist *beliefs*, while not relevant to the claims, would be relevant to the issue of punitive damages.

As Plaintiffs have previously explained, testimony about Mr. Schoep's alleged disavowal of white supremacist beliefs has no probative value on the merits and therefore should be excluded under Federal Rules of Evidence 401, 402, and 403. ECF No. 1242. In a pre-trial hearing on the matter, the Court agreed, explaining that the "fact that someone has changed their character after the event in question is not relevant" to claims being litigated. Mot. Hr'g Tr. at 79:11-12.

Plaintiffs also contend that the evidence is inadmissible as to punitive damages. As many courts have held, evidence of a parties' conduct subsequent to the relevant events is rarely admissible "because it is more likely to be motivated by a desire to mitigate punitive damages than by genuine contrition." *Swinton v. Potomac Corp.*, 270 F.3d 794, 813 (9th Cir. 2001) (collecting authorities); *see also O'Gilvie v. Int'l Playtex*, 821 F.2d 1438, 1450 (10th Cir. 1987). For similar reasons, Plaintiffs have argued that the Court should exclude this testimony, under Rule 403, as it may lead to a mini-trial on the sincerity of Mr. Schoep's alleged conversion. ECF No. 1242 at 10-12.

Indeed, in order to be relevant, that sort of evidence must demonstrate that the defendant undertook genuine efforts to remediate the relevant *conduct*. For example, a defendant in a mass torts case arising from an oil spill might offer evidence that it instituted a system to compensate people harmed by the spill. *In re Exxon Valdez*, 490 F.3d 1066, 1088 (9th Cir. 2007). Mr. Schoep's anticipated testimony, however, does not fit that mold. As far as Plaintiffs are aware, Mr. Schoep has never publicly renounced nor made any efforts to remedy the specific racially motivated *violence* and *intimidation* that occurred at Unite the Right. To the contrary, Mr. Schoep insists that neither he nor any member of NSM or the Nationalist Front did anything wrong at Unite the Right. Thus, Mr. Schoep's testimony will serve only one purpose: It will be a form of improper "character testimony" intended to rehabilitate his character. Mot. Hr'g Tr. at 76:10-11 (Mr. ReBrook) ("It's character testimony, Your Honor, is what it is."). As the Court has already held, bolstering Mr. Schoep's post-Unite the Right character is neither relevant nor admissible.¹ Mot. Hr'g Tr. at 76:13-14.

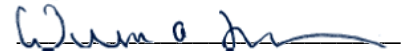
In addition, as Plaintiffs have previously explained, Mr. Schoep's anticipated testimony poses a serious risk of confusing the jury. As the Court has explained many times, Mr. Schoep is not on trial for his advocacy of, or involvement in, the white supremacist movement; instead, he is on trial for conspiring to commit violence and engaging in other acts which "transcend the bounds" of constitutionally protected expression or activity. *Sines v. Kessler*, No. 3:17-cv-00072, 2021 U.S. Dist. LEXIS 168130, at *97 (W.D. Va. Sep. 3, 2021). Yet testimony about Mr. Schoep's purported

¹ Even assuming that Mr. Schoep's character is relevant, it would be impermissible for him to prove that character by testimony about specific instances of conduct, as his post-Unite the Right character is not "an essential element of a charge, claim, or defense." Fed. R. Evid. 405.

conversion is likely to leave the jury with the misimpression that Mr. Schoep is on trial because of his white supremacist *beliefs*, rather than his unlawful *conduct*. The Court should not be permit Mr. Schoep to “misdirect the jury’s focus from the issues properly before it.” *United States v. Wellons*, 32 F.3d 117, 120 n.3 (4th Cir. 1994).

Finally, to the extent that testimony would be admissible, as discussed in Court on Friday, it would be important for the jury to know its limited purpose. Trial Tr. at 188:14-15. The Court agreed, and stated that it “would so instruct them.” Trial Tr. at 188:16-17. Plaintiffs respectfully request that, to the extent the Court permits Mr. Schoep to testify about his changed beliefs, it issue the limiting instruction set forth in Exhibit A.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'William A. Isaacson', written over a horizontal line.

William A. Isaacson

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

Of Counsel:

Roberta A. Kaplan (*pro hac vice*)
Julie E. Fink (*pro hac vice*)
Gabrielle E. Tenzer (*pro hac vice*)
Michael L. Bloch (*pro hac vice*)
Yotam Barkai (*pro hac vice*)
Emily C. Cole (*pro hac vice*)
Alexandra K. Conlon (*pro hac vice*)
Raymond P. Tolentino (*pro hac vice*)
Jonathan R. Kay (*pro hac vice*)
Benjamin D. White (*pro hac vice*)
KAPLAN HECKER & FINK LLP
350 Fifth Avenue, Suite 7110
New York, NY 10118
Telephone: (212) 763-0883
rkaplan@kaplanhecker.com
jfink@kaplanhecker.com

gtenzer@kaplanhecker.com
mbloch@kaplanhecker.com
ybarkai@kaplanhecker.com
ecole@kaplanhecker.com
aconlon@kaplanhecker.com
rtolentino@kaplanhecker.com
jkay@kaplanhecker.com
bwhite@kaplanhecker.com

Jessica Phillips (*pro hac vice*)
Karen L. Dunn (*pro hac vice*)
William A. Isaacson (*pro hac vice*)
Arpine S. Lawyer (*pro hac vice*)
Agbeko Petty (*pro hac vice*)
Giovanni Sanchez (*pro hac vice*)
Matteo Godi (*pro hac vice*)
PAUL WEISS RIFKIND WHARTON &
GARRISON LLP
2001 K Street, NW
Washington, DC 20006-1047
Telephone: (202) 223-7300
Fax: (202) 223-7420
jphillips@paulweiss.com
kdunn@paulweiss.com
wisaacson@paulweiss.com
alawyer@paulweiss.com
apetty@paulweiss.com
gsanchez@paulweiss.com
mgodi@paulweiss.com

Makiko Hiromi (*pro hac vice*)
Nicholas A. Butto (*pro hac vice*)
PAUL WEISS RIFKIND WHARTON &
GARRISON LLP
1285 Avenue of the Americas
New York, NY 10019-6064
Telephone: (212) 373-3000
Fax: (212) 757-3990
mhiromi@paulweiss.com
nbutto@paulweiss.com

Robert T. Cahill (VSB 38562)
COOLEY LLP
11951 Freedom Drive, 14th Floor

Alan Levine (*pro hac vice*)
Philip Bowman (*pro hac vice*)
COOLEY LLP

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

55 Hudson Yards
New York, NY 10001
Telephone: (212) 479-6260
Fax: (212) 479-6275
alevine@cooley.com
pbowman@cooley.com

Reston, VA 20190-5656
Telephone: (703) 456-8000
Fax: (703) 456-8100
rcahil@cooley.com

J. Benjamin Rottenborn (VSB 84796)
WOODS ROGERS PLC
10 South Jefferson St., Suite 1400
Roanoke, VA 24011
Telephone: (540) 983-7600
Fax: (540) 983-7711
brottenborn@woodsrogers.com

David E. Mills (*pro hac vice*)
Joshua M. Siegel (VSB 73416)
Caitlin B. Munley (*pro hac vice*)
Samantha A. Strauss (*pro hac vice*)
Alexandra Eber (*pro hac vice*)
Allegra K. Flamm (*pro hac vice*)
Gemma Seidita (*pro hac vice*)
Khary J. Anderson (*pro hac vice*)
COOLEY LLP
1299 Pennsylvania Avenue, NW
Suite 700
Washington, DC 20004
Telephone: (202) 842-7800
Fax: (202) 842-7899
dmills@cooley.com
jsiegel@cooley.com
cmunley@cooley.com
sastrauss@cooley.com
aeber@cooley.com
aflamm@cooley.com
gseidita@cooley.com
kanderson@cooley.com

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on November 14, 2021, I filed the foregoing with the Clerk of Court through the CM/ECF system, which will send a notice of electronic filing to:

Elmer Woodard
5661 US Hwy 29
Blairs, VA 24527
isuecrooks@comcast.net

James E. Kolenich
Kolenich Law Office
9435 Waterstone Blvd. #140
Cincinnati, OH 45249
jek318@gmail.com

*Counsel for Defendants Jason Kessler,
Nathan Damigo, and Identity Europa, Inc.
(Identity Evropa)*

David L. Campbell
Justin Saunders Gravatt
Duane, Hauck, Davis & Gravatt, P.C.
100 West Franklin Street, Suite 100
Richmond, VA 23220
dcampbell@dhdglaw.com
jgravatt@dhdglaw.com

Counsel for Defendant James A. Fields, Jr

Bryan Jones
106 W. South St., Suite 211
Charlottesville, VA 22902
bryan@bjoneslegal.com

*Counsel for Defendants Michael Hill,
Michael Tubbs, and League of the South*

William Edward ReBrook, IV
The ReBrook Law Office
6013 Clerkenwell Court
Burke, VA 22015
edward@rebrooklaw.com

Joshua Smith
Smith LLC
807 Crane Avenue
Pittsburgh, Pennsylvania 15216
joshsmith2020@gmail.com

*Counsel for Defendants Jeff Schoep, Matthew
Heimbach, Matthew Parrott, Traditionalist
Worker Party, National Socialist Movement,
and Nationalist Front*

*Counsel for Defendants Matthew Parrott,
Matthew Heimbach, and Traditionalist
Worker Party*

I hereby certify that on November 14, 2021, I also served the following non-ECF participants via mail or electronic mail:

Richard Spencer
richardbspencer@icloud.com
richardbspencer@gmail.com

Vanguard America
c/o Dillon Hopper
dillon_hopper@protonmail.com

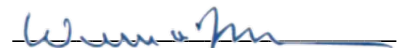
Elliott Kline a/k/a Eli Mosley
eli.f.mosley@gmail.com
deplorabletruth@gmail.com
eli.r.kline@gmail.com

Christopher Cantwell
Christopher Cantwell 00991-509
Central Virginia Regional Jail
13021 James Madison Hwy
Orange, VA 22960

Robert "Azzmador" Ray
azzmador@gmail.com

Dated: November 14, 2021

Very truly yours,

A handwritten signature in blue ink, appearing to read "William A. Isaacson", followed by a horizontal line.

William A. Isaacson